

The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. 35 ILCS 105/3. (This is a GIL.)

July 17, 2007

Dear Xxxxx:

This letter is in response to your letter dated November 16, 2006, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

It was recommended by Mark Russel that I contact you regarding clarification of sales tax that I need to pay on my aircraft purchase. Here is the situation;

On November 15 2006, I purchased used airplane from ABC in STATE --- see copy of the purchase agreement. ABC is not 'XYZ Dealer', and they took the airplane in trade. When the airplane was originally purchased from XYZ Factory, there was an option to place a \$13,500.00 deposit for upcoming option called Evade (Ice protection system). That original owner decided to pay that deposit, and have the option installed when available. Year later, the option was not certified yet to be installed, and XYZ owners that had that deposit paid, were given the option of taking the deposit back, or keep waiting. In the meantime, that original owner sold the airplane, and when I was buying it from ABC, I had the same option --- buy the aircraft with the deposit for the option, or buy it without one. I elected to buy it and have that deposit transferred to me (As such, I paid price for the airplane \$418,000.00, plus I paid additional \$13,500.00 to have that deposit now in my name). This way, if the option becomes available I will have priority for installation, and having deposit for it, guaranties the price. In the event that I choose not to install the option, or if the option is not certified and not available, I can always at any time request that deposit to be refunded back to me.

In such case, it is the opinion of my accountant as well as my interpretation of the definition of the 'taxable transfer, that this deposit is not subject to sales tax. Here is the definition as described on your website:

Sales & Use Taxes

Statutory References

Definition

'Sales tax' is imposed on a seller's receipts from sales of tangible personal property for use or consumption. Tangible personal property does not include real estate, stocks, bonds, or other 'paper' assets representing an interest.

As stated, **Tangible personal property does not include real estate, stocks bonds, or other 'paper' assets representing an interest.** \$13,500.00 that I am paying for this deposit is not for 'tangible property', but it is 'Paper asset' that I am paying to the dealer to have it. (I am not getting Evade (tangible property), but I am getting rights to the deposit that is held by the XYZ factory (paper asset).

Please be kind to confirm that this interpretation is correct, and if so, I will file the return accordingly. Please also note, that documentation of ABC to the STATE tax department, puts all this in one lump sum, and is reporting as total sale \$431,500.00. I would want to make certain that this will not 'conflict' with the information that I will file a return for (my return would be for \$418,000.00, and their form to the STATE Tax department states \$431,500.00 - see copy enclosed).

If there is anything else needed, or if you have any questions prior to your response, please call me.

As I need to file the return on time, your prompt response will be appreciated.

DEPARTMENT'S RESPONSE

This response is in regard only to Illinois sales tax. We do not administer any out-of-State tax laws.

The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. 35 ILCS 105/3.

Aircraft purchased from an out-of-State dealer, to be titled in Illinois, are reported on Form RUT-25. Form RUT-25 requires the reporting of the aircraft purchase price including the accessories, applicable federal excise tax, freight, labor, and documentary fees. A copy of the bill of sale should be attached as proof of the purchase price and any sales and use tax previously paid. If a bill of sale cannot be obtained, the following other documents may be submitted as proof of purchase: a copy of the dealer's invoice, a letter from the leasing company, a letter from the selling dealer, a fair market valuation from a licensed dealer, or a copy of the lease agreement. The item's purchase price and any amount of tax previously paid for the item must be clearly and separately stated.

Deposits and prepayments are not subject to Retailers' Occupation Tax (sales tax) until the delivery of the merchandise takes place or unless the merchandise has been specifically identified to

the contract. See 86 Ill. Adm. Code 130.430 and *United Technical Corp. v. Department of Revenue*, 107 Ill. App.3d 1062 (1982).

If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
Associate Counsel

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